



City of Chicago



SO2014-5750

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	6/25/2014
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Twenty-eighth amendment to District Cooling System Use Agreement with Thermal Chicago Corporation
Committee(s) Assignment:	Committee on Transportation and Public Way

SUBSTITUTE ORDINANCE

WHEREAS, on the fourteenth (14th) day of September, 1994, the City Council (the "City Council") of the City of Chicago, Illinois (the "City") adopted an Ordinance authorizing the City to enter into a "District Cooling System Use Agreement" (the "Original Agreement") with MDE Thermal Technologies, Inc. (formerly Exelon Thermal Technologies, Inc., and formerly before that Unicom Thermal Technologies, Inc. and formerly before that Northwind, Inc., and referred to herein as "Grantee"), which grants to Grantee the non-exclusive right to use certain public ways of the City to construct, operate and maintain a district cooling system (the "System"); and

WHEREAS, the City and Grantee entered into the Original Agreement as of October 1, 1994; and

WHEREAS, on the (seventeenth) 17th day of May, 1995, the City Council adopted an ordinance authorizing the City to enter into a "First Amendment to District Cooling System Use Agreement" (the "First Amendment"); and

WHEREAS, the First Amendment is dated as of June 1, 1995; and

WHEREAS, on the (thirteenth) 13th day of July, 1995, the City Council adopted an ordinance authorizing the City to enter into a "Second Amendment to District Cooling System Use Agreement" (the "Second Amendment"); and

WHEREAS, the Second Amendment is dated as of July 15, 1995; and

WHEREAS, on the (tenth) 10th day of January, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Third Amendment to District Cooling System Use Agreement" (the "Third Amendment"); and

WHEREAS, the Third Amendment is dated as of February 1, 1996; and

WHEREAS, on the (sixth) 6th day of March, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Fourth Amendment to District Cooling System Use Agreement" (the "Fourth Amendment"); and

WHEREAS, the Fourth Amendment is dated as of April 1, 1996; and

WHEREAS, on the (sixteenth) 16th day of April, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Fifth Amendment to District Cooling System Use Agreement" (the "Fifth Amendment"); and

WHEREAS, the Fifth Amendment is dated as of October 1, 1996, and

WHEREAS, on the (thirtieth) 30th day of October, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Sixth Amendment to District Cooling System Use Agreement" (the "Sixth Amendment"); and

WHEREAS, the Sixth Amendment is dated as of November 7, 1996; and

WHEREAS, on the (eleventh) 11th day of December, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Seventh Amendment to District Cooling System Use Agreement" (the "Seventh Amendment"); and

WHEREAS, the Seventh Amendment is dated as of January 15, 1997; and

WHEREAS, on the (seventh) 7th day of February, 1997, the City Council adopted an ordinance authorizing the City to enter into an "Eighth Amendment to District Cooling System Use Agreement" (the "Eighth Amendment"); and

WHEREAS, the Eighth Amendment is dated as of May 1, 1997; and

WHEREAS, on the (thirtieth) 30th day of July, 1997, the City Council adopted an ordinance authorizing the City to enter into a "Ninth Amendment to District Cooling System Use Agreement" (the "Ninth Amendment"); and

WHEREAS, the Ninth Amendment is dated as of August 1, 1997; and

WHEREAS, on the (tenth) 10th of September, 1997, the City Council adopted an ordinance authorizing the City to enter into a "Tenth Amendment" to District Cooling System Use Agreement (the "Tenth Amendment"); and

WHEREAS, the Tenth Amendment is dated as of October 1, 1997; and

WHEREAS, on the (fifth) 5th day of February, 1998, the City Council adopted an Ordinance authorizing the City to enter into an "Eleventh Amendment" to District Cooling System Use Agreement (the "Eleventh Amendment"); and

WHEREAS, the Eleventh Amendment is dated as of March 12, 1998; and

WHEREAS, on the (twenty-ninth) 29th day of April, 1998, the City Council adopted an Ordinance authorizing the City to enter into a "Twelfth Amendment to District Cooling System Use Agreement" (the "Twelfth Amendment"); and

WHEREAS, the Twelfth Amendment is dated as of June 1, 1998; and

WHEREAS, on the (seventh) 7th day of October, 1998, the City Council adopted an ordinance authorizing the City to enter into a "Thirteenth Amendment to District Cooling System Use Agreement" (the "Thirteenth Amendment"); and

WHEREAS, the Thirteenth Amendment is dated as of October 8, 1998; and

WHEREAS, on the (twenty-first) 21st day of April, 1999, the City Council adopted an Ordinance authorizing the City to enter into a "Fourteenth Amendment to District Cooling System Use Agreement" (the "Fourteenth Amendment"); and

WHEREAS, the Fourteenth Amendment is dated as of April 21, 1999; and

WHEREAS, on the (sixteenth) 16th day of February, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Fifteenth Amendment to District Cooling System Use Agreement" (the "Fifteenth Amendment"); and

WHEREAS, the Fifteenth Amendment is dated as of March 15, 2000; and

WHEREAS, on the sixteenth (16th) day of February, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Sixteenth Amendment to District Cooling System Use Agreement" (the "Sixteenth Amendment"); and

WHEREAS, the Sixteenth Amendment is dated as of March 15, 2000; and

WHEREAS, on the seventeenth day of May, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Seventeenth Amendment to District Cooling System Use Agreement" (the "Seventeenth Amendment"); and

WHEREAS, the Seventeenth Amendment is dated as of June 1, 2000; and

WHEREAS, on the twenty-seventh (27th) day of September, 2000, the City Council adopted an ordinance authorizing the change of control and name change from Unicom Thermal Technologies Inc. to Exelon Thermal Technologies, Inc. now known as MDE Thermal Technologies, Inc.; and

WHEREAS, on the seventh (7th) day of March, 2001, the City Council adopted an ordinance authorizing the City to enter into an "Eighteenth Amendment to District Cooling System Use Agreement" (the "Eighteenth Amendment"); and

WHEREAS, the Eighteenth Amendment is dated as of August 1, 2001; and

WHEREAS, on the thirty-first (31st) day of October, 2001, the City Council adopted an ordinance authorizing the City to enter into a "Nineteenth Amendment to District Cooling System Use Agreement" (the "Nineteenth Amendment"); and

WHEREAS, the Nineteenth Amendment is dated as of November 1, 2001; and

WHEREAS, on the ninth (9th) day of May, 2002, the City Council adopted an ordinance authorizing the City to enter into a "Twentieth Amendment to District Cooling System Use Agreement" (the "Twentieth Amendment") and collectively with the Original Agreement and all prior amendments described above (the "Current Agreement"); and

WHEREAS, the Twentieth Amendment is dated as June 1, 2002 and the Current Distribution Facilities are described in Exhibit 1; and

WHEREAS, on the twenty-third (23rd) day of June, 2004, the City of Chicago adopted an ordinance authorizing the City to enter into a "Twenty-First Amendment to the District Cooling System Use Agreement" (the "Twenty-First Amendment") which authorized the change of ownership and control of Thermal Chicago Corporation from Exelon Thermal Holdings, Inc. to Macquarie District Energy, Inc.; and

WHEREAS, the Twenty-First Amendment is dated as of June 30, 2004; and

WHEREAS, on the twenty-third (23rd) day of June, 2004, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Second Amendment to the District Cooling System Use Agreement" (the "Twenty-Second Amendment") which authorized the change of ownership and control of Exelon Thermal Technologies, Inc. from Macquarie Investment Holdings, Inc. to Macquarie Infrastructure Assets, Inc. and collectively with the Original Agreement and all prior amendments described above the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

WHEREAS, the Twenty-Second Amendment is dated as of December 23, 2004; and

WHEREAS, on the sixth (6th) day of October, 2005, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Third Amendment to the District Cooling System Use Agreement" (the "Twenty-Third Amendment") which authorized amendments to the current Exhibits to include in the current Distribution Facilities a portion of East Randolph Street from North Columbus Drive to a point approximately 340 feet east of the right-of-way line of North Columbus Drive, and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

WHEREAS, the Twenty-Third Amendment is dated as of November 1, 2005; and

WHEREAS, on the first (1st) day of November, 2006 the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Fourth Amendment to the District Cooling System Use Agreement" (the "Twenty-Fourth Amendment") which authorized amendments to the current Exhibits to include in the current Distribution Facilities with respect to Plant #1 Wabash Avenue from Adams Street to 200 feet north of Monroe Street, with respect to Plant #3 in the LaSalle Street Trolley Tunnel, from Lake Street to Kinzie, in Kinzie Street from the LaSalle Street Trolley Tunnel to 75 feet east of State Street and in Erie Street from State Street to Michigan Avenue and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

WHEREAS, the Twenty-Fourth Amendment is dated as of November 1, 2006; and

WHEREAS, on the thirtieth (30th) day of July, 2008, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Fifth Amendment to the District Cooling System Use Agreement" (the "Twenty-Fifth Amendment") which authorized the extension of the Termination Date of the Original Agreement to December 31, 2040 in consideration of an increase in the use fee from 3.0% of Grantee's Total Gross Billings to 3.5% of Grantee's Gross Billings commencing on January 1, 2009 and another .5% increase of Grantee's Gross Billings effective January 1, 2014, and the City reserved the right after considering and analyzing business and economic realities to increase the General Compensation by no more than 2% of Grantee's Gross Billings in 2024 in any event not to exceed in the aggregate 6.0% of Grantee's Gross Billings throughout the term of the Current Agreement; and

WHEREAS, the Twenty-Fifth Amendment is dated as of October 1, 2008; and

WHEREAS, On the eighth (8th) day of September 2011, the City Council of the City adopted an ordinance authorizing the City to enter into a "Twenty-Sixth Amendment to the District Cooling System Use Agreement" (the Twenty-Sixth Amendment") which authorized amendment to the current exhibits to include in the current Distribution Facilities a portion of Wabash Avenue, from Erie Street to Superior Street, and a portion of Superior Street, from Wabash Avenue to a point 100 feet west of Wabash Avenue, and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the "Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

WHEREAS, The Twenty-Sixth Amendment is dated as of October 18, 2011; and

WHEREAS, the Grantee has informed the City that Macquarie District Energy Holdings II, LLC, a Delaware limited liability company ("MDE") intends to transfer ownership and control of the Grantee, by selling all its membership interest in Macquarie District Energy Holdings LLC, a Delaware limited liability company which owns all of the shares of Thermal Chicago Corporation (which in turn owns all of the shares in the Grantee) to BIF II District Energy Holdings II (Delaware) L.P., a Delaware limited partnership ("BIF II LP") (the "Second Transfer") in accordance with the basic terms described in Exhibit 2 (the "Terms") attached hereto and incorporated herein; and

WHEREAS, although BIF II LP is the named "Buyer" in the Second Transfer, as described above, before closing the rights of BIF II LP to acquire all membership interests in Macquarie District Energy Holdings LLC will be assigned to District Energy Holdings L.P. ("Brookfield"), which will acquire the interests in, and, following closing, be the direct parent of, Macquarie District Energy Holdings, LLC and therefore own and control the Grantee; and

WHEREAS, after the Second Transfer it is proposed to change the name of the Grantee to Enwave Chicago Inc.; and

WHEREAS, Section 4.1.4 of the Current Agreement requires prior City Council approval where ownership of 50 percent or more of the control of the Grantee is acquired during the term of the Current Agreement; and

WHEREAS, it is intended that Brookfield (or a subsidiary or other affiliate thereof) will be obtaining financing in connection with the Second Transfer, and to obtain such financing a pledge of all of the shares of Grantee may be required to secure the indebtedness incurred under such financing; and

WHEREAS, Section 4.1.5 of the Current Agreement requires prior City Council approval of a pledge where such pledge shall involve hypothecation of more than seventy-five (75%) of the fair market value of Grantee's District Cooling System; and

WHEREAS, the Grantee desires to obtain City Council approval for the Second Transfer and to amend the Current Agreement to reflect the change of ownership and operation of the Grantee to Brookfield and for a pledge to be granted of all of the shares of Grantee to secure indebtedness incurred under any financing obtained by Brookfield (or a subsidiary or other affiliate thereof) in connection with the Second Transfer (and any refinancing of such indebtedness); and

WHEREAS, Brookfield is a wholly-owned subsidiary of Brookfield Infrastructure Fund II, a private investment fund controlled by Brookfield Asset Management Inc., comprised of Delaware limited partnerships; and

WHEREAS, Brookfield is committed to retaining the Grantee's current labor force and management team to manage and operate the System, endeavor to employ locally in construction and operational efforts and to purchase supplies from local businesses when building future infrastructure; and

WHEREAS, Brookfield agrees to cause the Grantee to continue to comply with all of the provisions of the Current Agreement, including the MBE/WBE requirements, insurance provisions, letter of credit and permit fee requirements and the Municipal Code of Chicago; and

WHEREAS, the City is prepared to consent to the proposed change of control if: 1) the proposed changes of control do not adversely affect amounts to be paid the City under the Current Agreement, and 2) Brookfield shall cause the Grantee to continue to be responsible for the same or substantially similar obligations the Grantee has undertaken in the Current Agreement with regards to the System, and any and all construction, installation, operation and maintenance of the System; and

WHEREAS, Brookfield has provided proof of legal, technical, financial and character qualifications to own a company which operates the System and has provided disclosure of ownership interests as required by Chapter 2-154 of the Municipal Code of Chicago; and

WHEREAS, the City, Grantee, and Brookfield have reached agreement as to the Terms under which the City will consent to the proposed change of control of the Grantee in the Second Transfer and of the proposed pledge to be granted of all of the shares of Grantee; and

WHEREAS, Grantee now requests the City, by action of this City Council to approve the proposed change of control of the Grantee to Brookfield, the name change of the Grantee and of the proposed pledge to be granted of all of the shares of Grantee; and

WHEREAS, Brookfield now request the City, by action of this City Council to approve the proposed change of control of the Grantee to Brookfield and of the proposed pledge to be granted of all of the shares of Grantee as consistent with the Terms; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated herein and made a part of this ordinance by reference as though fully set forth herein.

SECTION 2. Approval is hereby granted in accordance with Section 4.1.4 of the Current Agreement, for the proposed change of control of the Grantee to Brookfield as well as the proposed subsequent change of control of Grantee as described in the Terms.

SECTION 3. The City hereby approves the change of the name of Grantee to Enwave Chicago Inc..

SECTION 4. The City hereby approves in accordance with Section 4.1.5 of the Current Agreement the pledge to be granted of all of the shares of Grantee under any financing obtained by Brookfield (or a subsidiary or other affiliate thereof) in connection with the Second Transfer (and any refinancing of such indebtedness).

SECTION 5. The City hereby approves the form of consent attached here as Exhibit 3.

SECTION 6. Subject to the approval of the Corporation Counsel as to form and legality, the Commissioner of the Department of Fleet and Facility Management, the Commissioner of the Department of Transportation (collectively, the "Commissioners"), and the City Comptroller are hereby authorized to enter into and execute on behalf of the City, a Twenty-Eighth Amendment to the District Cooling System Use Agreement (the "Twenty-Eighth Amendment") substantially in the form attached hereto as Exhibit 4"), subject to such changes as shall be approved by the Commissioners and City Comptroller their execution constituting conclusive evidence of their approval and this City Council's approval of any such changes or revisions therein from the form of the Twenty-Eighth Amendment attached hereto. Such officials may also negotiate in the Twenty First Amendment and Twenty Second Amendment such additional environmental terms and conditions as shall be deemed desirable by the Commissioner of the City's Department of Fleet and Facility Management. In addition, such officials may also negotiate in the Twenty Eighth Amendment such changes to the insurance terms and conditions set forth in Section 6 of the Current Agreement as shall be deemed desirable by the City's Risk Manager.

SECTION 7. All ordinances, resolutions and agreements, or parts thereof, in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 8. This Ordinance shall be in full force and effect immediately upon its passage and approval.

Exhibit 1

Twenty-Eighth Amendment To District
Cooling System Use Agreement

The Grantee's District Cooling System is anticipated to be constructed in the Public Ways and at the approved plant locations set forth below. The exact location of each component of Grantee's Distribution Facilities shall be presented to and reviewed by the City as set forth in the Agreement on an on-going basis prior to construction and installation in order to obtain permits for construction and installation specifying the exact locations of the Grantee's Distribution Facilities.

Production Plant Number 1: Northeast corner of South State Street and East Adams Street.

Distribution Piping: In South LaSalle Street proceeding for two hundred (200) feet north, more or less, from the intersection of West Adams Street. In South Dearborn Street, from West Adams Street to West Lake Street including the portions of the South Dearborn Street/West Madison Street intersection. In West Adams Street, from South LaSalle Street to South Michigan Avenue. In South Wabash Avenue, from West Adams Street to two hundred (200) feet north of West Monroe Street. In West Madison Street, from South Dearborn Street to the north/south public alley which lies one hundred twenty (120) feet west of the west right-of-way line of South State Street and in said alley, from West Madison Street to West Monroe Street. In City property at the northwest corner of West Carroll Avenue and North Dearborn Street. In West Adams Street, from South Franklin Street to a point one hundred (100) feet west of Lower Wacker Drive.

Production Plant Number 2: Northwest corner of South Franklin Street and West Congress Parkway.

Distribution Piping:

In West Van Buren Street, from South Wacker Drive to South Franklin Street. In South Franklin Street, from West Van Buren Street to West Lake Street. In West Jackson Boulevard, from South Franklin Street to one hundred fifty (150) feet east of South State Street. In the West Jackson Boulevard/South Dearborn Street intersection and in South Dearborn Street, from such intersection to one hundred (100) feet south of such intersection. In North LaSalle Street, from West Wacker Drive to West Van Buren Street. In West Washington Street, from North LaSalle Street to approximately three hundred (300) feet west of North Franklin Street. In the Washington Street Trolley Tunnel, from three hundred (300) feet west of North Franklin Street to North Water Street. In West Randolph Street, from the South Branch of the Chicago River to a point 150 feet east of Canal Street. In West Lake Street, from the South Branch of the Chicago River to a point 150 feet east of Canal Street. On City property consisting of viaducts and/or bridge facilities located between South Canal Street and the south branch of the Chicago River in the following locations: West Washington Street and West Monroe Street. In West Monroe Street, from South Dearborn Street to South Clark Street.

Production Plant Number 3:

Northeast corner of East Randolph Street and North Columbus Drive (located in the Blue Cross/Blue Shield Building).

Distribution Piping:

In North Columbus Drive, from East Randolph Street to East South Water Street. In East South Water Street, from North Columbus Drive to North Garland Court. In Garland Court, from East Lake Street to approximately three hundred

(300) feet north of East Wacker Drive. In West Lake Street, from North Garland Court to North LaSalle Street.

In LaSalle Street Trolley Tunnel, from West Lake Street to Kinzie Street. In West Carroll Avenue, from the westerly right-of-way line of North Wells Street to North Clark Street, and in addition, the North Clark Street/West Carroll Avenue and North Dearborn Street/West Carroll Avenue intersections, To the extent of City property interests therein, In the lower West Carroll Avenue access driveway (but only to the extent permitted by and consistent with City property interest therein) extending from the south line of West Kinzie Street beginning at a point eighty-eight (88) feet east of North Dearborn Street for a distance of approximately ninety-eight (98) feet south and thence generally in a southwesterly direction for approximately one hundred fifty-one (151) feet to the intersection of lower West Carroll Avenue and North Dearborn Street. In West Kinzie Street, from the LaSalle Street Trolley Tunnel to seventy-five (75) feet east of North State Street. In North LaSalle Street, from West Carroll Avenue to approximately fifty (50) feet north of West Carroll Avenue. Across and under West Kinzie Street, from the Merchandise Mart to the building commonly known as 400 North Franklin Street, for piping with a maximum trench-width of six (6) feet to be located west of the North Franklin Street/West Kinzie Street intersection and east of the North Orleans Street/West Kinzie Street intersection. Across and under North Orleans Street, from the Merchandise Mart to the Apparel Center for piping with a maximum trench-width of six (6) feet to be

located south of the West Kinzie Street/North Orleans Street intersection and north of the Chicago River.

In a portion of West Kinzie Street, from seventy-five (75) feet east of North Dearborn Street to North Dearborn Street. In North Dearborn Street, from West Kinzie Street to West Ontario Street. In West Ontario Street, from North Dearborn Street to North Wabash Avenue. In North Wabash Avenue, from East Grand Avenue to East Superior Street. In East Superior Street, from North Wabash Avenue to a point 100 feet west of North Wabash Avenue. In East Erie Street, from North State Street to North Michigan Avenue. In East Grand Avenue, from North Wabash Avenue to a point approximately one hundred fifty (150) feet east of North St. Clair Street. In North Rush Street, from East Erie Street to East Superior Street.

In North Garland Court, from East Lake Street to East Benton Place, In East Benton Place, from East Garland Court to North Wabash Avenue. In East Randolph Street, from a point three hundred forty (340) feet east of North Columbus Drive to and including North Michigan Avenue.

Production Plant Number 4:

North Orleans Street on the west, North Wells Street on the east, West Kinzie Street on the north, and the Chicago River on the south (located in the Merchandise Mart building).

Distribution Piping:

In West Washington Street, from North Dearborn Street to North State Street. Under the North Orleans Street viaduct, from Grantee's existing piping (north of the Chicago River) to West Kinzie Street. In West Kinzie Street, from the West Kinzie

Street/North Orleans Street intersection west to the north/south public alley west of North Orleans Street; north in said north/south public alley to the east/west public alley. In said east/west public alley west to a point two hundred twenty (220) feet west of North Orleans Street. In the north/south alley east of North Kingsbury Street, from West Hubbard Street to the existing piping in the east/west alley south of West Hubbard Street. In West Hubbard Street, from North Kingsbury Street to the north/south public alley immediately east of North Kingsbury Street. In North Kingsbury Street, from West Hubbard Street to West Chicago Avenue up to and including the intersection of North Kingsbury Street and West Chicago Avenue. In West Chicago Avenue, from North Kingsbury Street to North Larrabee Street. In North State Street, from Lake Street to Randolph Street.

Production Plant Number 5:

Southeast corner of North State Street and East Kinzie Street (located in the IBM Building) 301 North State Street.

Distribution Piping:

In East Kinzie Street from the LaSalle Street Trolley Tunnel to seventy-five (75) feet east of North State Street. In North State Street, from the intersection with West Kinzie Street to a point approximately two hundred (200) feet south of such intersection.

This exhibit is subject to amendment pursuant to the provisions of Section 7.1.2 of the Agreement (including City Council authorization and departmental approvals) to incorporate new Approved Plants and Additional Distribution Facilities and subject to amendment pursuant to the provisions of Section 7.1.1 of the Agreement (including departmental approvals) to amend the locations of the Distribution Facilities based on changes in construction conditions.

All amendments required changes in location not based on construction conditions shall require City Council authorization.

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Exhibit 3

Form of Consent

Terms of Transfer

Parties.

Seller: Macquarie Infrastructure Company, LLC¹ (“Macquarie”)

Proposed Buyer: District Energy Holdings L.P. (a wholly-owned subsidiary of Brookfield Infrastructure Fund II, a private investment fund controlled by Brookfield Asset Management Inc.) (“Brookfield”)

Reference is made to that certain Ordinance dated as of [____], 2014 (the “Ordinance”). All capitalized terms used herein but not defined herein shall have the meaning given such terms in the Ordinance. Macquarie intends to sell all of its interest in Macquarie District Energy Holdings, LLC (“MDE”), the indirect owner of MDE Thermal Technologies, Inc., to Brookfield.² Brookfield (or a subsidiary or other affiliate thereof) will be obtaining financing in connection therewith, including a pledge of all of the shares of Grantee to secure the indebtedness incurred under such financing.

I. Management By Brookfield.

Brookfield will purchase MDE and all of the businesses directly and indirectly owned by MDE, including the district cooling system (the “System”) operated by MDE Thermal Technologies, Inc. (the “Grantee”). The Grantee will continue to operate the System and manage the personnel under the name Enwave Chicago Inc. Brookfield will continue to manage the operation of the System in the same manner as set forth in the Current Use Agreement as may be amended under the terms of the ordinance. As a core business of Brookfield, Brookfield has a particular interest in making sure that all goes well with the System. Brookfield’s track record and performance in operating the System is critical to its reputation in the marketplace.

Brookfield will notify the City of any amendment to the applicable business license or any notices provided by parties thereunder with respect to defaults or termination.

II. Directors.

Brookfield will notify the City upon acceptance by the selected nominees for any directors of Brookfield of their proposed appointment and will consult with the City in good faith to resolve any concerns that the City may have regarding such persons.

¹ Note: DLA to confirm entity.

² Note: Jack to confirm if minority interest seller should be referenced.

Exhibit 4

This Twenty-Eighth Amendment to District Cooling System Use Agreement ("Twenty-Eighth Amendment") dated as of _____, 2014 (the "Effective Date") by and between the City of Chicago, Illinois (the "City"), a home rule unit and municipality under Article VII of the Constitution of the State of Illinois, MDE Thermal Technologies, Inc. (formerly Exelon Thermal Technologies, Inc. and formerly before that Unicom Thermal Technologies, Inc., and formerly before that Northwind, Inc.), an Illinois corporation (the "Grantee") and District Energy Holdings L.P., wholly-owned indirect subsidiary of Brookfield Infrastructure Fund II, a private investment fund controlled by Brookfield Asset Management Inc. (the "Transferee").

Witnesseth:

WHEREAS, the City and the Grantee have entered into that certain District Cooling System Use Agreement dated as of October 1, 1994 as amended (the "Current Agreement") which grants to the Grantee the non-exclusive right to use certain public ways of the City to construct, operate and maintain a district cooling system (the "System") and

WHEREAS, Section 4.1.4 of the Current Agreement requires prior approval of the City Council of the City ("City Council") where ownership of fifty percent (50 percent) or more of the control of Grantee is acquired during the term of the Current Agreement in any transaction or series of transactions by a person or one (1) or more persons acting in concert, none of whom owned or controlled fifty percent (50 percent) or more of the right to control Grantee, singly or collectively on the Effective Date of this amendment; and

WHEREAS, Macquarie Infrastructure Company, LLC, intends to sell all of its interest in Macquarie District Energy Holdings, LLC (the indirect corporate parent of the Grantee) to the Transferee and now request the City, by action of the City Council to approve the proposed change of control of the Grantee; and

WHEREAS, the City does not object to the transfer of control of Grantee for purposes of Section 4.1.4 of the Current Agreement; and

WHEREAS, the City is prepared to consent to the proposed change of control of the Grantee to the Transferee which has provided proof of legal, technical, financial and character qualifications to own the Grantee and operate the System and completed disclosure of ownership interests as required by the Municipal Code of Chicago and provided such other certifications as the City shall determine are required; and

WHEREAS, Section 4.1.5 of the Current Agreement requires prior City Council approval of a pledge where such pledge shall involve hypothecation of more than seventy-five (75%) of the fair market value of the System; and

WHEREAS, it is intended that Transferee (or a subsidiary or other affiliate thereof) will be

obtaining financing in connection with the above described transfer, and to obtain such financing a pledge of all of the shares of Grantee may be required to secure the indebtedness incurred under such financing (any any refinancing thereof); and

WHEREAS, the City is prepared to consent to the proposed pledge under Section 4.1.5 of the Current Agreement; and

WHEREAS, after the above described transfer it is proposed to change the name of the Grantee to Enwave Chicago Inc.; and

WHEREAS, the City council on _____ 2014 approved execution of a Twenty-Eighth Amendment to the Current Agreement in substantially the form of this Twenty-Eighth Amendment; and

WHEREAS, the City and the Grantee now desire to amend the Current Agreement on the terms and conditions set forth below;

Now, Therefore, It is agreed by the parties hereto as follows:

Section 1. The above recitals are expressly incorporated herein and made a part of this Twenty-Eighth Amendment by reference as though fully set forth herein.

Section 2. As of the Effective Date of this Twenty-Eighth Amendment, the Grantee agrees to continue to comply with all the provisions of the Current Agreement including the provisions of 4.1.4 and 4.1.5. It is acknowledged by the parties that a change of control of the Grantee is approved by the City and Transferee will become the indirect owner of Grantee for purposes of the Current Agreement, and the pledge of the equity in the Grantee is approved by the City, in accordance with the following terms:

The undersigned _____, and _____, the Commissioner of the Department of Transportation and the Commissioner of the Department of Business Affairs and Consumer Protection, on behalf of the City of Chicago (the "City") do hereby give our consent to the change of control of the Grantee to Brookfield in accordance with Section 4.1.4, of the Current Agreement and the pledge of the equity in the Grantee under Section 4.1.5 of the Current Agreement, and acknowledge that after the change in control the name of the Grantee will be changed to Enwave Chicago Inc.

Transferee represents that the Grantee is not in default of the Current Agreement as of the Effective Date.

Transferee acknowledges that it has read the Current Agreement and is familiar with its terms and will cause the Grantee to continue to comply with all the provisions of the Current Agreement, the Municipal Code of Chicago and all applicable local, state and federal laws.

Section 3. Commencing on the Effective Date, the Current Agreement is hereby amended to acknowledge the change of control of the Grantee, the pledge of the equity in the

Grantee, and the change in the name of the Grantee, in accordance with the terms of the Current Agreement, as amended by this Twenty-Eighth Amendment. All terms and conditions of the Current Agreement not modified by this Twenty-Eighth Amendment shall remain in full force and effect.

In Witness Whereof, the City has caused this Twenty-Eighth Amendment to be duly executed in its name and behold as of the date first written by its Commissioner of the Department of Transportation, its Commissioner of the Department of Business Affairs and Consumer Protection, the Grantee and the Transferee have signed and sealed the same on or as of the day and year first written.

[SEAL]

City of Chicago

By: _____
Title Commissioner
Department of Transportation

By: _____
Title Commissioner
Department of Fleet and Facility
Management

By: _____
Title: Commissioner
Business Affairs and Consumer Protection

Reviewed As To Form And Legality:

Senior Counsel

Attest:

District Energy Holdings L.P.

By: _____
Title:

Attest:

MDE Thermal Technologies, Inc.

By: _____

Title: _____